

**Town of Milford
Zoning Board of Adjustment
August 18, 2016
Case #2016-19
Rymes Heating Oils, Inc.
Special Exception**

Present: Kevin Johnson Chairman
Michael Thornton
Joan Dargie
Jason Plourde
Rob Costantino

Excused: Len Harten
Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

Rymes Heating Oils, Inc. for property located at 419-425 Nashua Street, Milford, N.H. Tax Map 31, Lot 3 & 4, in the Limited Commercial-Business District, is seeking a Special Exception per the Milford Zoning Ordinances Article II, Section 2/03.1.C to allow the pre-existing non-conforming use of fuel storage facilities on Lot 4 to be expanded onto Lot 3 when the lots are consolidated into one lot.

MINUTES APPROVED ON 11/3/16

K. Johnson, Chair, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He then introduced the Board. He informed all of the procedures of the Board.

K. Johnson read the notice of hearing into the record.

K. Johnson stated that because of the late time, it was unlikely they would complete the case that evening.

K. Johnson stated that because of the late time, it was unlikely they would complete the case that evening. Atty. Morgan Hollis of Gottesman & Hollis in Nashua, representing Rymes Oil and owners RYFF 6 LLC and RYFF 1 LLC, came forward.

M. Hollis said there were two lots, 421 and 425 Nashua St. Lot 3 and 4 of Map 31. Currently Lot 4 used as active fuel storage facility. They store fuel, bring trucks in.

M. Thornton asked if fuel was oil.

M. Hollis said yes.

K. Johnson asked what AST was.

M. Hollis said above ground storage tank. It was there a number of years and before gasoline and oil stored. Currently only oil. Existing structures on it. Lot 3 is vacant lot that was abandoned use of empty residence. Over years it was subject of zoning applications. They are proposing to consolidate both lots, making one lot, Lot 4. Because of existing use, new Lot 4 basically same except larger. It is pre-existing

nonconforming use. Last year there was application for variance on Lot 3. At that time question whether special exception or variance, since use was going to be one use. Was an issue whether lots being combined or not. Should application be special exception or variance? Variance was denied. After that he became involved.

K. Johnson said Bd questioned whether variance or special exception was appropriate. Applicant determined at that time they did not want to combine lots. Therefore, it was a separate lot and would have required variance. That was decision by applicant, not the Bd.

M. Hollis said he became involved and question was whether to combine the lots. Answer was yes. As minutes reflect that reason for keeping separate was to limit exposure for past sins, if you will. Decision was it would all be one facility, so lots combined. Intend to combine the lots should special exception be granted. He asked Zoning Administrator for opinion and reasoning to avoid debate as to whether it was or wasn't. By law, must ask Zoning Administrator to make that determination. On 5/23/16 Lincoln Daley issued his opinion. He read that. It was in the case file. Requesting a special exception to expand pre-existing nonconforming use. Proposing to add one additional tank of different type of fuel. Proposed tank is for propane. Expansion permitted if it met criteria of Sec. 2.03.1.C and Sec. 10.02.01 of ordinance. First condition, 2.03.1.C, not changing nature of the original use or structure, and not involve substantial effect on the neighborhood. In this case, it is a use. Think of it as single large lot with existing use. No dilapidated building – will be removed if special exception is granted and that the appeal is based on lot consolidation. There are existing tanks and open lot area. He had submitted picture in the historical file from an earlier variance application for proposed antique shop. Gave overall view of tanks, the building to be removed, the abutter's house which really the only one in the vicinity which is owned by the Medlyns. They filed an objection. He passed out copies of the picture to the Bd. Colored in red was proposed location for proposed tank. Also in historical file was map done with Tax Map Overlay, a little clearer. Wanted everyone to see historic one, tanks along the border line. Those were gasoline storage tanks that do not exist today. In the general area where they will locate the new one. He also presented a historical map, site plan for Mrs. Jean Lamarche, undated. It was in file, shows residential house, storage tank, etc. Gives reference on how long storage tanks have been on the property. Finally, had a Google Earth aerial for reference. Question was whether expansion of use by adding one 30,000 gal. propane tank 75 ft. from existing tank, approx. 125 ft. from front property line, approx 85 ft. from other property line and 155 ft. from Medlyn house. Had plan submitted with application. Pointed out street in front, location of property immediately adjacent and part of it will be Lot 4, and closest existing tank. Proposed tank proposed to be at the furthest northwest corner, furthest distance from Medlyn property. Engineer measured it 155 ft. from tank to the Medlyn house. Approx 75 ft from the existing tank. Pointed out old house to be removed. Pointed out location of tank for which special exception being requested. Will be fencing around area. Existing fence will come down. Trucks will come onto existing site and over to tank and fill up and leave.

M. Thornton asked if they will drive in and turn around?

M. Hollis not currently proposing that because they don't have a site plan. Will have to go to Planning Bd. Proposal based on not asking to put the propane trucks closer to the house going out. If Planning Bd directs that, they would have to come back to ZBA. Currently proposal is to pull trucks in and fuel up and pull trucks away. That was including small trucks you see on the street. One addition of 30,000 gal. tank with fencing around. Bd. evaluations will assess if by adding that tank will change the nature of original use or involve substantially different effect on the neighborhood. No. It has always had fuel storage in this area. At one time gasoline tanks. Expanding a little over the line but not substantial. much safer and less flammable. Meets safety requirements. Believed it didn't change nature or original use. Tanker trucks come in and fill storage tanks and leave. Small trucks come in and pick up either oil or propane and leave. Mr. Rymes would testify that it involves one large tanker truck a day per year, on average. So, one large tanker truck of fuel and three to five of the fuel oil/propane trucks that you see everywhere.

K. Johnson asked about proposed rail service.

M. Hollis said no proposed service by rail. No proposed cleaning or repairing. Tanks come in average one a day and three to five of those trucks already existing. No additional parking of additional trucks. The same trucks that go up and down the street will continue with no additional trucks. Even less traffic because currently have to go back and forth between here and Bennington.

M. Thornton imagined most of the year one tanker would be adequate; in cold winter, would one tanker truck be adequate?

M. Hollis said that in summer would probably be less than one per day and in winter could be two a day. That was why he said average of one a day. He asked Mr. Rymes.

J. Rymes said it depended on weather. Last winter one would have been plenty. Prior to that would have been 1 to 1 ½.

M. Thornton said it was a matter of degree days.

J. Rymes said yes. Even on a high cold winter their anticipation would be one a day.

K. Johnson said, as a point of order to clarify, this gentleman was the applicant, not a member of the public. His remarks not considered public comment. It was response to questions to the applicant.

M. Hollis thought that addressed the first prong of first requirement. Will not change nature of original use. Re involving substantially different effect on the neighborhood, they view it as having two effects and Bd's job was to determine whether it involved substantially different effects. First is adding one tanker truck plus three propane supply trucks. Although those three come and go and park there at night; will come in for fueling and leaving. Also involving a new tank with new type of fuel. One issue raised by abutters was safety. Would like to have expert witness who prepared assessment, which he hoped the Bd had read, address these issues of safety issues of valves on tanks and 30,000 gallon is safer than you can see in people's yards. With Bd's permission he would like to present him as witness.

Mike Cricenti, Fire Protection Engineer, came forward.

K. Johnson asked if they were aware of e-mails that went back and forth. Members of audience were not. He said he would cover them.

N. Cricenti, principal at SSC Engineering in Windham. They are very experienced in design of LP gas tanks. Designed over two million gallons of them. 18,000 gal. to million gal. facilities. History of safety level of these facilities and how the code looks at them as opposed to other things. In late 60's and 70's there were major problems with LP gas transportation. Railroad cars would explode, people hurt or killed, etc. LP gas industry decided that this couldn't continue. Most codes react to a fire, sprinklers in buildings, proper exits, etc. NFPA 58 decided they were not going to have a fire. Started using best technology in early 80's through today. Mandatory system. It is one of few fire codes with retroactive requirements. All tanks have valves internal that are normally closed. In order to get propane out you have to open the valve. They get hot or excess coming out, valve tells that. When valve gets hot it shuts. System of small tubes surrounding the entire system, all valves and pipes, filled with nitrogen holding the valves open. If they get hot, it shuts. Any excess flow, valves shuts. If pipe breaks, the spill is whatever the capacity of that pipe is.

M. Thornton referred to incident mentioned in Manchester VT where it was indicated the driver had left the valve open. Would this valve close whatever that driver left open?

N. Cricenti said yes.

M. Thornton asked, because of excess flow?

N. Cricenti said he couldn't find reports from Manchester Fire Marshall but someone left it open and allowed couple of gallons of propane to leak out.

M. Thornton said two percent.

N. Cricenti said 10,000 gallon tank, two percent. Only thing that happened was the next driver got cold burns from shutting the valve because when gas expands rapidly it gets cold. There is a problem with that plant that allowed that to happen. It could not meet today's standards. When Fire Dept. came, they went home in an hour. Everything dissipated. Other than driver who closed the valve, nobody was hurt.

Nothing bad happened. This proposed tank will have all safety in place. There are emergency stops drivers can push to shut things down. Hoses that Rymes uses to connect the truck to the tank are called smart hoses so that if something breaks it shuts. As technology increases this code makes effort to keep up with it. In old days the codes required only water. Now they rely on fact they will not have a fire. In addition the tank shell has been modified to withstand heat better. You could have a big fire next to it and not generate any bad development other than the relief valve opening. Fire safety analysis goes through the iterations of the valves, distances, Fire Dept. operations, so that everybody understands where and how this is put together. This is only a draft because they can't do final site safety analysis until the plan is absolutely complete so they can make sure all the parts and procedures for this plant are incorporated into the document. Fire Dept. captain reviewed document and agreed it satisfied his needs.

M. Hollis thought it was in record and pre-submitted. Letter by the assessment and summary letter by Mr. Cricenti were pre-submitted to the Bd. in advance of last hearing/

K. Johnson asked if that was dated 8/1?

M. Hollis said yes. Also had e-mail to Lincoln Daley.

K. Johnson said Bd. members also had them.

Attorney for abutters had them, also, so Kevin didn't need to read them.

M. Hollis also had copy of Lincoln Daley's letter. He thought it was in the record, but passed out copies in case they hadn't had a chance to review them.

K. Johnson asked for any questions re safety report or general overall safety of the proposal.

M. Thornton – no. J. Dargie – none at this point. R. Costantino – no. J. Plourde – no. K. Johnson –no.

K. Johnson said they were at a stopping point. Asked for a motion to continue hearing to Sept. 1. Will pick up at this point where applicant makes presentation before public comments and will follow deliberative session on Wolcott case.

M. Thornton made motion to continue case to Sept. 1.

J. Dargie seconded.

All in favor.

Attorney Prolman asked if the Bd would need Mr. Cricenti again. K. Johnson said as far as he was concerned, with materials submitted and letters received, based on presentation, didn't have any further need for him. Other Bd. members didn't. K. Johnson said no further need for Mr. Cricenti to be there. If any serious issue they need to have him address they could continue hearing and have him address, or have him submit written response if need be.